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10/036,862	12/21/2001	David William Koenig	659/915	4028

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Glen P. Belvis
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/036,862
Filing Date: December 21, 2001
Appellant(s): KOENIG ET AL.

Amanda M. Church
For Appellant

EXAMINER'S ANSWER

MAILED

JUL 08 2005

GROUP 3600

This is in response to the appeal brief filed March 28, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of Claims*

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-34.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Claimed Subject Matter*

The summary of claimed subject matter contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) *Claims Appendix*

A substantially correct copy of appealed claims 1-34 appears on pages 21-25 of the Appendix to the appellant's brief. The minor errors are as follows: in claim 1, line 5, "last" should be --least--.

(8) *Evidence Relied Upon*

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Marino U.S. Patent No. 5,950,960

(9) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-34 are rejected under 35 U.S.C. 103 (a). Patent 5,950,960, issued to Marino. Marino clearly teaches an apparatus capable of being sold to the public and further comprising a first and second housing so as to house moist wipes (note col. 3, lines 1-35) and specifically a dry roll of tissue/toilet paper (note col. 1, lines 30-60) intended for use on a human body surface (as inferred throughout the patent). The reference however fails to teach: "instructing a user to wipe an animal body/human skin surface with a fresh product at least three times"; nor does the reference teach instructing the user to wipe with either of the product (wet wipes or dry tissue/toilet paper) at selected intervals and combinations (i.e., "wipe the surface with a dry product, followed by wiping the surface with a dry product, followed by wiping the surface with a wet product"...); nor does the reference teach a plurality of wet wipes or toilet tissue. With regard to the plurality of pads or "the first number of portions is double the second number of portions", it would have been obvious to one having

Art Unit: 3644

ordinary skill in the art at the time the invention was made is have supplied the device of Marino with as many wet wipes and toilet tissue paper as so desired and, which would further keep the device adequately supplied, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St Regis Paper Co., B, Bemis Co.*, 193 USPQ 8. Concerning the limitation of instructing a user and having instructions printed on a package of wipes, the Examiner takes Official Notice as to the well known implement of instructional data associated with devices for sale, so as to better inform a user as to the intended operation of a device by a manufacturer. Additionally, the act of cleaning an animal has been around for as long as animals and man have existed. Although the examiner cannot find any specific written teaching on how an animal or person is cleaned with wipes, it is set forth that it is human nature and/or common sense to use whatever seems most efficient at the time. This would include wiping a muddy dog down with a dry towel first to remove most of the mud, then a wet towel to clean the animal, then a dry towel for drying the animal, or a number of towels if the towels are small, etc.

(10) *Response to Argument*

The Marino ('960) reference clearly teaches an apparatus capable of being sold to the public and further comprising a first and second housing so as to house moist wipes (note col. 3, lines 1-35) and specifically a dry roll of tissue/toilet paper (note col. 1, lines 30-60). The reference however fails to teach: "instructing a user to wipe an animal body surface with a fresh product at least three times"; nor does the reference

Art Unit: 3644

teach instructing the user to wipe with either of the products (wet wipes or dry tissue/toilet paper) at selected intervals and combinations (i.e., "wipe the surface with a dry product, followed by wiping the surface with a dry product, followed by wiping the surface with a wet product"...). Concerning the limitation of instructing a user and having instructions printed on a package of wipes, it is maintained that it is considered well known to use instructional data associated with devices for sale, so as to better inform a user as to the intended operation of a device by a manufacturer.

Applicants' argue that Marino ('960) teaches away from including instructions directed to the specific sequences and/or combinations of fresh products recited in Claim 1, and that Marino instead teaches that dry and wet tissues are used exclusively of one another, not in combination with one another. This argument is refuted in that the Marino ('960) reference teaches a device for dispensing both moist and dry wipes. Further, Marino states (col. 1, lines 59-60):

"...use can be attained from users who prefer dry
tissue **and** who prefer moist tissue"

which, contrary to Applicant's conclusion, suggests that both wet and dry tissue can be used together as opposed to one being used **instead of** the other. Additionally, it should be noted with respect to Claim 1, that the claim given its broadest interpretation recites the use of **a** product at least three times, wherein the fresh product can be chosen from a dry fresh product and/OR a wet fresh product (i.e. a singular wet cloth could be used multiple times). Such use or instruction of use is

Art Unit: 3644

considered inherent as it pertains to wiping, washing, or otherwise removing soil to some degree from an animal. It is reiterated that with regard to the claimed limitations of instructing a user to wipe a certain number of times, and using selected sequences and combinations, such limitations are considered to be obvious in view of it being well known to print instructions on cleaning wipes. Additionally, the number of times one uses the wipe, retrieves a fresh wipe, the ratio or combination of wet and dry wipes are considered obvious depending on the area to be cleaned, the type of animal, type of soil, ... etc. (i.e. more wipes or a combination of wet and dry may be required for tougher stain/soil/dirt removal). For example, to remove mud from the paws of an animal may require a sequence of dry, wet, dry, whereas to remove feces from a long haired dog may require a combination of dry, wet, dry. Furthermore, it would seem that the cleaning protocol might depend somewhat on the type of animal (i.e. a snake and a furry chow chow dog may require different cleaning steps).

Applicants' argue that the specific combination of cleaning wipes claimed yields surprising and unexpected results, however, it is maintained that instructions pertaining to obvious, well known, necessary and widely practiced tasks (such as removing soil or feces) yield expected results, and are, therefore, not considered to be novel. For example, in a method of cooking which instructs one to stir a mixture twice to prevent clumping or sticking (undesirable characteristics), is not novel. Additionally, with respect to Applicants' assertion of unexpected results based on an analysis of the

Art Unit: 3644

removal of fluorescent beads (Appeal Brief, pages 13-14), it is unclear how such beads reflect or pertain to soil removal to substantiate a finding of unexpected results.

Therefore, it is maintained that it would have been obvious to use the Marino ('960) dispenser in the manner claimed, since the standard of obviousness is based on knowledge that is generally available to one skilled in the art.

(11) *Related Proceeding(s) Appendix*

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Yvonne R. Abbott

Conferees:


Michael Carone


Jack Keith